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November 25, 1996

Federal Communications Commission
Washington, D.C. 20554

In re:

Cellular Communications of Puerto Rico, Inc.
Petition for Declaratory Ruling or Rulemaking
to Determine Whether Competitive Bidding Procedures
Should be Used to License Certain Cellular
Rural Service Areas

DOCKET FILE COPY ORIGINAL

(RM-8897)

To: The Commission

**COMMENT IN OPPOSITION TO CELLULAR COMMUNICATIONS OF
PUERTO RICO, INC.'S PETITION FOR A DECLARATORY RULING
OR, IN THE ALTERNATIVE FOR A RULEMAKING SUPPORTING THE
USE OF COMPETITIVE BIDDING PROCEDURES FOR THE
REMAINING UNSERVED RSA MARKETS**

We hereby request the Commission to uphold its Memorandum Opinion and Order (in the matter of Implementation of Section 309(j) of the Communications Act - Competitive Bidding), adopted May 27, 1994, wherein it states, "In this Order, we state our intention to use existing random selection procedures to choose from among mutually exclusive applications filed prior to July 26, 1993, for authorization to provide cellular service to unserved areas. This request is consistent with the Special Rule adopted in Section 6002(e) of the Budget Act."

As one of the owners of a small but successful telecommunications construction business, I vehemently oppose Cellular Communications of Puerto Rico, Inc.'s (CCPR) petition to auction the remaining unserved RSA market areas. Although I could mount many arguments against CCPR's petition, there are three areas in particular that I believe deserve comment here:

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- 1) CCPR's petition implies that all potential lottery winners are speculative investors interested in a financial windfall from the sale of their newly won license to another party who is truly interested in building the system and providing service.

While this may be true in many instances, there are some of us who really do stand ready to build and operate cellular telephone systems. The revenue and value from an operating system is much more desirable to me and my group than the return on investment from a quick license sale.

My company has been engaged in the construction of telecommunications systems since 1978 and for the past 10 years has been engaged almost exclusively in the complete turnkey construction of cellular, SMR and recently, PCS systems. Our regular customers have included such companies as McCaw Communications, Southwestern Bell Mobile Systems, Nextel and Sprint Spectrum. For more than eight years now, our group has been standing ready to build and operate a cellular telephone system.

- 2) CCPR's petition states that "Indeed, those parties who are truly serious about constructing and operating systems in these RSAs will fare much better in an auction than through the luck of random selection."

Nothing could be further from the truth. The lottery is the only chance we have in obtaining a cellular license. The auction method would drive the prices paid for individual RSAs to a level that would far exceed the limit a group of small businessmen could afford to pay. The original purpose of the lotteries was to foster competition in and rapid development of cellular coverage by giving all citizens and in particular small business, a fair and equitable chance at owning rights to a piece of the public spectrum. The auction method would insure that only the largest corporations would be playing in the game.

- 3) CCPR's petition states that "The applicants for these RSAs have already lost the lotteries and, only by virtue of the disqualification of the winning entity, are they getting a second chance."

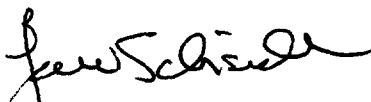
This is nothing but pure selfishness on the part of those favoring an auction. After eight years of development, those favoring an auction now recognize that the remaining RSA markets have extreme value, indeed, much more than when they were first made available in the lottery, and the prospective bidders know that they have a much better chance at winning them through financial strength rather than through luck of the random draw. The fact is we, as small businessmen and private

citizens, in good faith, paid our application fees for chances at the RSA markets of our choice. The fees that my group paid included chances at the remaining RSA markets now in question. The fact that the winning applicants for these markets were later disqualified does not mean that the requirements of the lottery have been satisfied; it simply means that the markets are not yet awarded. The lotteries should continue to be held until a qualified applicant is found for each of the remaining RSA markets, otherwise, at the very least, the application fees should be refunded with interest, since the United States government will have failed to deliver what it had promised.

As a general and final comment, if you find in favor of CCPR's petition and declare the unserved RSA markets available for auction, it will be the second time the United States government reneged on its promise and illegally took money from me. My group paid application fees for and actually won an unserved MSA area in Syracuse, New York. Upon winning, we were required to pay additional engineering fees to validate our position as tentative selectee. After the petition to deny period had expired, the current licensee stepped forward and registered an objection. The FCC, in ignoring the expiration of the petition period, forced us to pay additional legal fees to defend our position as tentative selectee. To solve the impasse, the FCC simply found in favor of the current licensee and announced that the Syracuse market that we applied for and won should not have been offered in the lottery in the first place. In other words, the United States government, in which we are supposed to have full faith and credit, fraudulently offered for sale and accepted money for something that, by its own admission, had no right to sell in the first place. No mention of refund of application fee or reimbursement of engineering and legal fees was made.

To avoid a similar mistake and for other reasons cited above, I request that the Commission honor its existing rules to use random selection to award cellular licenses for RSAs for which applications were filed prior to July 26, 1993, where the original tentative selectee has been disqualified and no license has been awarded to date.

Respectfully submitted,



Jon W. Scheidker
Vice President

CERTIFICATE OF SERVICE

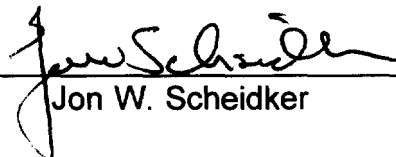
I, Jon W. Scheidker, hereby certify that a copy of the foregoing "Comment in Opposition to Cellular Communications of Puerto Rico, Inc.'s Petition for a Declaratory Ruling or, in the Alternative for a Rulemaking Supporting the Use of Competitive Bidding Procedures for the Remaining Unserved RSA Markets" was served this 26th day of November by Federal Express mail on the following:

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